

EARTH POWER CORP.
THERMAL RESOURCES, INC.

IBLA 77-324
77-555

Decided June 22, 1981

Appeals from decisions of the Utah State Office, Bureau of Land Management, requiring the acceptance of certain stipulations as a condition for issuance of various geothermal resource leases. U 25336, U 37159, and U 37161.

Set aside and remanded.

1. Geothermal Leases: Discretion to Lease -- Geothermal Leases:
Stipulations

Decisions by BLM to require acceptance of special stipulations prior to leasing certain lands for geothermal resources will be upheld when the record shows that the decisions reflect a reasoned analysis of the factors involved based upon considerations of public interest, and no sufficient reason to disturb the decisions is shown. Where Geological Survey has reported that lands sought are valuable for geothermal resources and Congress recently passed legislation in support of the development of geothermal resources, decisions requiring no surface occupancy stipulations will be set aside and the cases remanded for consideration of the feasibility of the leases issuing with less onerous stipulations.

APPEARANCES: P. Thomas Thornbrugh, Esq., for appellants.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Earth Power Corporation (Earth Power) appeals from the decision of the Utah State Office, Bureau of Land Management (BLM), dated March 29, 1977, which required appellant to accept a special stipulation providing for no surface occupancy on certain lands as a condition precedent to issuance of geothermal resources lease U 25336, and to indicate willingness to accept a similar stipulation for other lands in the application, the absence of which would result in final rejection of the application as to such lands. 1/

Thermal Resources, Inc., appeals from a similar Utah State Office decision dated August 16, 1977, rejecting, in part, geothermal resources lease applications U 37159 and U 37161, as to a portion of the lands identified therein unless appellant indicated a willingness

1/ BLM's decision required the acceptance of a stipulation stating:

"No occupancy or other activity on the surface of lots 1-4, S 1/2 NW 1/4 Sec. 4; lots 5, 6, W 1/2 NE 1/4, SE 1/4 Sec. 10; and the W 1/2 NE 1/4, E 1/2 NW 1/4, N 1/2 SW 1/4, SW 1/4 SW 1/4 Sec. 15, T. 22 S., R. 6 W., SLM, Utah, is allowed under this lease." In addition, it requested that Earth Power indicate whether it would accept a lease with a no surface occupancy stipulation for the S 1/2 NE 1/4, S 1/2 sec. 4; sec. 9; W 1/2 sec. 10; and the W 1/2 NW 1/4 sec. 15, T. 22 S., R. 6 W., Salt Lake meridian, Utah.

Lease application U 25336 also covered the E 1/2 NE 1/4, SE 1/4 SW 1/4, and SE 1/4 sec. 15, T. 22 S., R. 6 W., Salt Lake meridian, Utah. The decision indicated that action to process the application as to these lands would be taken after Earth Power responded to the stipulation requirement.

to accept special stipulations providing for no surface occupancy on those lands. 2/

The appeals have been consolidated by the Board because identical statements of reasons have been filed by each appellant, and the issues at bar are identical.

The BLM decision directed to appellant Thermal Resources, Inc., stated:

The National Environmental Policy Act of 1969 declared a national policy to encourage productive and enjoyable harmony between man and his environment and required all agencies of the Federal Government to include in every recommendation or report on proposals for legislation and other major federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official. Therefore, and under the regulations in 43 CFR 3200.0-6(a), the Sevier Lake geothermal environmental analysis has been prepared by the Richfield District Office, Bureau of Land Management.

The environmental analysis identifies * * * [part of the] lands [in the application] as having outstanding resource values incompatible with geothermal resources leasing: * * *.

These lands are within the Tabernacle Hill geological area. Tabernacle Hill consists of a volcanic crater,

2/ Lease application U 37159 covered secs. 5, 6, 8, 17, T. 22 S., R. 6 W., Salt Lake meridian, Utah. Lease application U 37161 covered secs. 7 and 30, lots 1 through 4, E 1/2 W 1/2, NE 1/4 sec. 18, and lots 1 through 4, E 1/2 W 1/2, SE 1/4, SW 1/4 NE 1/4 sec. 19, T. 22 S., R. 6 W., Salt Lake meridian, Utah.

The BLM decision held for rejection secs. 5, 8, and 17, T. 22 S., R. 6 W., Salt Lake meridian, from lease application U 37159 and the E 1/2 sec. 7 and N 1/2 NE 1/4, SE 1/4 NE 1/4 sec. 18, T. 22 S., R. 6 W., Salt Lake meridian from lease application U 37161, unless Thermal Resources, Inc., agreed to a no surface occupancy stipulation as to those lands.

numerous lava tubes, a large cinder cone resembling the Mormon Tabernacle in Salt Lake City, and the surrounding lava flow. The cinder cone area consists of thirteen recent volcanic cones and craters plus the surrounding lava flow. The area is a favorite of school groups in all educational levels. A recreation area designation, a protective withdrawal, and facility development are proposed for the area.

A public meeting was held in Fillmore, Utah on March 9, 1977 to discuss a proposed withdrawal from the public land and mining laws. Approximately eighty percent of the forty people attending the meeting favored the withdrawal.

Geothermal exploration, development and operation on or near this recreation site could reduce or destroy the recreational value of the site. Geothermal activity in close proximity would be out of harmony with and would detract from the interpretive and scenic values of this geologic site. Mainly, as with general recreation use, geothermal activity will draw new people into the area and recreational demands will increase at specific recreation sites. Littering, human waste problems and general deterioration of this site could occur. Also, geothermal production facilities could block access points and interfere with the physical use of this recreation area. Adjacent production noise could make the visiting of adjacent recreational sites unenjoyable. Producing steam adjacent to popular recreation areas could be dangerous. If a well should become uncapped, recreational visitors could be injured and the recreation site would have to be closed.

It has been determined that the public interest would best be served by invoking the discretionary authority of the Secretary of the Interior and holding the applications for rejection as [to] the * * * described lands. The only alternative to rejection of these lands is issuance of a lease which would prohibit occupancy and might never afford any beneficial use. Chevron Oil Company, 24 IBLA 159 (1976).

In addition to the above, the BLM decision sent to Earth Power also stated:

The regulations in 43 CFR 3200.0-6(b) state that special terms and conditions shall be developed to be included in leases as required to protect the environment,

to permit use of the land for other purposes, and to protect other natural resources. Accordingly, it has been determined that a lease should not be issued for * * * [a portion of the lands identified in the lease application] authorizing disturbance of the surface. A lease may be issued upon acceptance of the enclosed stipulation.

In each case, appellant was given 30 days to act to accept the restrictions outlined or suffer rejection of its application as to those lands.

In their statement of reasons, appellants contend that the requirement for a no surface occupancy stipulation constitutes improper use of discretion under 43 CFR 3200.0-6(b), 3/ without an affirmative showing that the criteria in that regulation have been considered. It is argued that the need for energy mineral deposits was not considered by BLM,

3/ The cited regulation 43 CFR 3200.0-6(b) reads as follows:

"(b) Prior to the final selection of tracts for leasing, the Director, or the head of the agency charged with the administration of the surface, if that officer so elects, shall, when appropriate, evaluate fully the potential effect of the geothermal resources operations pursuant to a leasing program on the total environment, fish and other aquatic resources, wildlife habitat and populations, aesthetics, recreation, and other resources in the entire area during exploratory, developmental, and operational phases. This evaluation will consider the potential impact of the possible development and utilization of the geothermal resources including the construction of power generating plants and transmission facilities on lands which may or may not be included in a geothermal lease. To aid him in his evaluation and selection of tracts the Director shall request and consider the views and recommendations of appropriate Federal agencies, may hold public hearings after appropriate notice, and shall, as appropriate, consult with State agencies, organizations, industries, and lease applicants, and shall consider all other potential factors, such as use of the land and its natural resources, the need for the energy mineral deposits, and socio-economic conditions consistent with multiple-use management principles. If a decision is made to lease, the Director shall develop special terms and conditions to be included in leases as required to protect the environment, to permit use of the land for other purposes, and to protect other natural resources."

contrary to the mandate of the Congress as expressed in the legislative history of the Geothermal Steam Act of 1970. 4/ Further, they state that the required stipulations do not consider the principles of multiple use management set out in the Act. 5/ Finally, appellants contend that it has not been shown by BLM that the no surface occupancy stipulation is required to protect the environment, to permit use of the land for other purposes, or to protect the natural resources present. To the contrary, they state that the decisions holding that the area is a favorite of school groups in all educational levels and that a proposed protective withdrawal and facility development for recreation have not been shown to be incompatible with surface development of the geothermal resources. They contend the decisions are merely speculative as to possible harm to recreational visitors from the anticipated geothermal development.

In conclusion appellants state that the dangers complained of will be minimized by the fact that all operations under geothermal resources leases must adhere strictly to and comply with the Geothermal Resources Operational Orders promulgated by Geological Survey.

BLM has filed an application, U 40395, to withdraw from settlement, sale, location, and entry under the general land laws, including the

4/ 30 U.S.C. §§ 1001-1025 (1976).

5/ Appellants cite to section 17 of the Geothermal Steam Act of 1970, 30 U.S.C. § 1016 (1976), which states in part:

"Administration of this chapter shall be under the principles of multiple use of lands and resources, and geothermal leases shall, insofar as feasible, allow for coexistence of other leases of the same lands for deposits of minerals under the laws applicable to them, for the location and production of claims under the mining laws, and for other uses of the areas covered by them."

mining laws, some 4,097 acres in T. 22 S., R. 6 W., Salt Lake meridian, including most of the land included in the three geothermal resources lease applications on appeal. The proposed withdrawal will not preclude mineral leasing. See 45 FR 40241 (June 13, 1980). In its request for permission to file the withdrawal application, BLM stated that the Geological Survey had reported that all the lands involved are valuable for geothermal resources.

In the Geothermal Energy Act of 1980, P.L. 96-294, §§ 602-644, 94 Stat. 763-77 (1980) (to be codified at 30 U.S.C. §§ 1501-1542), the Congress found specifically that domestic geothermal resources can be developed into regionally significant energy sources promoting the economic health and national security of the Nation. The Act authorized the Secretary of Energy to make project loans for geothermal reservoir exploration; to study and establish a reservoir insurance program; and to provide assistance for studies of the feasibility of accelerating development of certain geothermal resources.

[1] Generally, a decision by BLM to refrain from leasing certain lands for geothermal resources will be upheld when the record shows the decision to be a reasoned analysis of the factors involved based upon considerations of public interest and when no sufficient reason to disturb the decision is demonstrated. California Geothermal, Inc., 37 IBLA 172 (1978). A decision to require acceptance of restrictive stipulations, rather than to refuse to lease, will be upheld on a similar basis. Western Oil Shale Corp., 41 IBLA 105 (1979). Here, however, in light of the recently expressed policy of the Congress in support of the multiple

use of land and of the development of geothermal resources, and in light of the report of the Geological Survey that the lands sought are indeed valuable for geothermal resources, we will remand the cases to BLM for further study to determine if geothermal resources leases can reasonably be issued with less onerous stipulations than the no surface occupancy stipulations originally proposed, without destroying the scenic and recreational values of the site.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the cases remanded to the BLM State Director for Utah for further action consistent with this decision.

Douglas E. Henriques
Administrative Judge

We concur:

Bernard V. Parrette
Chief Administrative Judge

Edward W. Stuebing
Administrative Judge

